ciple as in such cases as *In re Bailey* (1915), 50 Mont. 365, 146 Pac. 1101, Ann. Cas. 1917 B, 1198, in which an unlicensed person was held guilty of contempt of court in holding himself out as an attorney at law.

BANKRUPTCY—PREFERENCE—MEANING OF "INSOLVENT."—In an action in a state court by a trustee in bankruptcy to recover for the estate a preferential transfer, the court refused an instruction requested by plaintiff that if defendant "was not able to pay its debts in due course of business it would be deemed insolvent." *Held,* error to refuse such instruction. *Simpson* v. *Western Hardware & Metal Co.* (Wash. 1917), 167 Pac. 113.

Section 1, Cl. 15, of the BANKRUPTCY ACT provides that "A person shall be deemed insolvent within the provisions of this act whenever the aggregate of his property * * * shall not, at a fair valuation, be sufficient in amount to pay his debts." Section 60a provides that "A person shall be deemed to have given a preference if, being insolvent, he has, * * * made a transfer," etc. Under Sec. 60b such preferential transfers may, under certain conditions, be recovered back by the trustee, by action in a federal or state court. It was in such a proceeding that the court in the principal case held the meaning of "insolvent" should be determined according to state law rather than by the BANKRUPTCY ACT. No authority is cited, and probably none could be found supporting such view. In view of the fact that the whole proceeding was based on the BANKRUPTCY ACT, the trustee deriving all of his powers therefrom, and preferential payments being recoverable by him solely because of the Act, it would seem almost too clear for argument that the lower court was right. In *Crancer & Co.* v. *Wade,* 26 Okl. 757, 25 Am. Bankr. R. 880, where the action was the same as in the principal case the court said that the definition of "insolvency" as fixed by the BANKRUPTCY ACT "must be strictly adhered to." And in *Summerville* v. *Stockton Milling Co.,* 142 Cal. 529, where the question was whether a mortgage was an unlawful preference under the BANKRUPTCY ACT, the court applied the definition of insolvency therein, although the other meaning had been adopted in earlier cases not involving the ACT of 1898. *In re Ramazzina,* 110 Cal. 488. Section 3a(4) declares an act of bankruptcy to have been committed if "because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state * * * " There would seem to be much more excuse for following the rule of the state court as to what amounts to insolvency in cases arising under this provision than in cases like the principal case. It has been generally considered, however, that the definition in the ACT is to control such cases. *Maplecroft Mills* v. *Childs,* 226 Fed. 415. See comment in 14 MICH. L. REV. 338.

CARRIERS—INTERSTATE COMMERCE COMMISSION—SCOPE OF ORDER REGULATING INTRASTATE RATES.—An order of the Interstate Commerce Commission directed certain express companies to remove an existing discrimination against interstate commerce by ceasing to charge higher rates between Sioux City, Iowa, and South Dakota points than for substantially equal distances between such South Dakota points and five named South Dakota cities. The order undertook to give to the carriers a discretion as to the method to be

employed and as to the territory to which it should apply, but intimated that the desired result might best be obtained by raising intrastate rates. The express companies, disregarding the orders and regulations of the State Board of Railroad Commissioners, raised their intrastate rates between the five named South Dakota cities and points in every part of the state. *Held,* the Commission's order can serve as a justification for disregarding a regulation issued under state authority only to the extent necessary to remove discrimination in definite competitive territory. *American Express Co. et al* v. *State of South Dakota* (1917), 37 Sup. Ct. 656.

In reversing the decision of the Supreme Court of South Dakota, reported in P. U. R. 1917C, 471, 161 N. W. 132, Justice BRANDEIS briefly reaffirms the power of Congress to control intrastate charges of an interstate carrier to the extent necessary to prevent injurious discrimination against interstate commerce, the doctrine laid down in the *Minnesota Rate Cases,* 230 U. S. 352, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151; and also reaffirms the intention of Congress to delegate this power to the Interstate Commerce Commission by the INTERSTATE COMMERCE ACT, 24 Stat. 379, c. 104, U. S. Comp. St. 1901, p. 3154, and the amendments thereto, the question decided in the *Shreveport* case, *Houston E. & W. T. Ry. Co.* v. *U. S.,* 234 U. S. 342, 34 Sup. Ct. 833, 58 L. Ed. 1341. Although these two decisions have been subjected to considerable adverse criticism as departures from authoritative precedents, for a scholarly treatment of which, see 28 HARVARD LAW REVIEW, p. 34, the court in the instant case holds the doctrines of those cases as established beyond controversy. The same position is upheld in *St. Louis I. M. & S. Ry. Co. et al.* v. *State* (Ark.), 197 S. W. 1. But another, and perhaps more important question, was raised for decision in the instant case by the action of the carriers in raising their rates from the five specified cities to points in all parts of the state, contrary to the orders of the state board. In the *Shreveport* case, *supra,* the order of the Interstate Commerce Commission, 23 I. C. C. 231, was definite as to the points to which the rates were to be changed; but in the present case the order itself, 39 I. C. C. 703, specified neither the territory to be affected nor the rates to be put into effect. The court holds, that in a case like the present where Federal and state authorities conflict, the order must definitely define and limit the territory in which the discrimination is found to exist, for it is only within that sphere that the power of the Federal Commission dominates state regulation. The court here finds the order sufficiently definite when read in conjunction with the report annexed thereto, and that the order of the commission did not apply to rate advances other than those in competitive territory in the southeastern part of South Dakota. The question of the power of the Interstate Commerce Commission to authorize the raising of all intrastate rates contrary to state regulations, and not merely those in competitive territory, is now being argued by certain Illinois railroads before the Commission.

CONSTITUTIONAL LAW—CONSCRIPTION ACT OF MAY 18, 1917, VALIDITY OF.—Defendant was indicted for conspiracy to commit an offense against the United States in unlawfully and wilfully aiding, abetting, and procuring per-